

## **REMARKS**

Applicants wish to thank the Examiner for reviewing the present patent application.

### **I. Correction of Filing Receipt**

Applicants, have on numerous occasions, pointed out to the Patent Office that the present patent application is identified as Serial No. 09/868,944 with a filing date of September 24, 2001 (to Van Buuren et al.), as indicated on all Patent Office documentation. However, the original postcard for this application (a copy attached herewith) indicates that this application should have a Serial No. of 09/868,841, with a filing date of June 21, 2001.

Applicants again ask for assistance in correcting the filing receipt and kindly ask the Examiner to direct Applicants to the branch that can correct this matter or to forward the filewrapper to such branch. Applicants have been attempting to correct the filing receipt for almost one year.

### **II. Rejection Under 35 USC §103**

The Examiner has rejected claims 12-14 under 35 USC §103 as being unpatentable over Lai Ganguli, EP 0 849 353 (hereinafter '353). In the rejection, the Examiner mentions, in summary, that the '353 reference discloses debittering olive oil where the olive oil contains from 300 to 2000 ppm polyphenols. The Examiner further mentions that the reference describes suspended polyphenols in oil and that water in the olive oil is dispersed and slowly settles out. The Examiner admits that independent claim 12 differs from the '353 reference in

that the size of the particles are not described. The Examiner also mentions that the only difference between the '353 reference and claims 13 and 14 are the use of a graph to determine the bitterness of the olive fruit. In view of the above, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

Newly filed claim 12 is directed to a vegetable oil which contains at least 180 ppm of olive phenolics, wherein the oil comprises a dispersion of solid matter derived from olive fruit and having a particle size of 0.1 microns to 5 millimeters and in that at least 18 ppm of the olive phenolics is associated with said particles.

Independent claim 12 is further defined by the dependent claims which claim, among other things, the amount of olive derived solid matter being chosen so that a bitterness score of less than 3 results where bitterness is assessed by comparison with standard oleuropein solutions using the graph of Figure 1. Dependent claim 14 also further defines claim 12 by mentioning the amount of olive derived solid matter being chosen so that a phenolics content of at least 300 ppm and a bitterness score of less than 5 results where bitterness is assessed by comparison with standard oleuropein solutions using the graph of Figure 1.

In contrast, the '353 reference is merely directed to the debittering of olive oil. The reference describes an olive oil containing 300 to 1000 ppm polyphenols wherein the olive oil has a bitter index K225 which is not higher than 0.3. There is no teaching whatsoever in the '353 reference that even remotely suggests a

dispersion of solid matter derived of olive oil fruit with a particle size of 0.1 microns to 5 millimeters whereby at least 18 ppm of the olive phenolics is associated with the solid matter of the defined particle size.

In view of the above, it is clear that all of the important and critical limitations set forth in the presently claimed invention are not found in the '353 reference. Therefore, the Examiner has not established a *prima facie* case of obviousness as required under 35 USC §103. Applicants, thus, request that the obviousness rejection be withdrawn and rendered moot.

### III. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 12-14 under 35 USC §102(b) as being anticipated by Lai Ganguli, EP 0 849 353 (hereinafter '353).

In the rejection, the Examiner mentions, in summary, that the '353 reference discloses the claim limitations of claim 12-14 and that particle sizes would be expected to fall within the claimed ranges. Thus, the Examiner believes that the novelty rejection is warranted.

As already made of record, the '353 reference fails, in every viable way, to teach, suggest, and disclose a vegetable oil that has specific characteristics, namely 180 ppm of olive phenolics wherein the oil comprises a dispersion of solid matter derived of olive fruit with a specific particle size of 0.1 microns to 5 millimeters in that at least 18 ppm of the olive phenolics is associated with the particles. Since all of the important and critical limitations set forth in the claimed invention are not found in a single prior art reference, namely the '353 reference, the novelty rejection should be withdrawn and rendered moot.

IV. Rejection Under 35 USC §103

The Examiner has rejection claims 15-22 under 35 USC §103 as being unpatentable over Aeschbach et al., U.S. Patent No. 5,585,130 (hereinafter '130) in view of Gutfinger.

In the rejection, the Examiner mentions, in summary, that the '130 reference discloses the incorporation of antioxidant principals into fat by use of antioxidants from vegetable material. The Examiner further mentions that olive oil is described as an oil source in claim 4. The Examiner admits that claim 15 differs from the '130 reference in the express suggestion that olives contain polyphenolics, and however, the Examiner relies on Gutfinger for teaching that olives contain polyphenolics and that the polyphenolics are antioxidants. In view of the above, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

Independent claim 15 is directed to a method for fortifying a food product with phenolic compounds comprising incorporating into the food products solid matter derived from olives which have not been subjected to debittering treatment, which solid matter has a particle size of 0.1 microns to 5 millimeters, characterized in that the olives derived solid matter is added to the food product. The invention of claim 15 is further defined by the dependent claims which claim, among other things, the amount of olive derived phenolic compounds, soak time, and the type of food product (e.g., a spread, salad dressing, mayonnaise, or sauce).

In contrast, the '130 reference is directed to adding phenolic antioxidant from spice vegetable materials such as rosemary, sage, fine, oregano, marjoram, savory, ginger, and turmeric. Phenolic antioxidants may also be removed from tomato skins, pimento skins and cocoa bean skins. The desired antioxidants are preferably odorless, colorless and substantially tasteless. Such phenolic antioxidants are added to a fat vehicle wherein the same are fats of animal or vegetable origin which are sensitive to oxidation and which contain unsaturated fatty acids. Examples of the fats used as the vehicle are chicken fat, lard, and palm oil. Oil may also be used as the vehicle and such oils may be selected from olive oil, safflower/sunflower oil, a hydrogenated and fractionated non-lauric vegetable cottonseed or soybean oil. Thus, fat and oil are the vehicle for carrying the phenolic antioxidants described in the '130 reference (please see column 2). In contrast, the presently claimed invention provides for phenolic compounds to be incorporated into food products such as spreads, salad dressings, mayonnaise or a sauce wherein the phenolic compound is supplied as solid matter derived from olives. Nothing in the '130 reference in combination with the Gutfinger reference even remotely describes such a process. In view of the above, Applicants respectfully request that the obviousness rejection be withdrawn and rendered moot.

Applicants respectfully submit that all claims of record are ready to pass to issue. Applicants also please ask the Examiner for assistance with respect to a corrected filing receipt in this patent application.

Reconsideration and favorable action are earnestly solicited.

In the event the Examiner has any questions or concerns, she is kindly invited to contact the undersigned at her earliest convenience.

Respectfully submitted,

A handwritten signature in black ink, consisting of several loops and a trailing flourish, positioned above a horizontal line.

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